IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.977 OF 2005

WITH

CIVIL APPLICATION NO.1151 OF 2005

Smt.Laxmi T. Naik ..Appellant.

Vs.

The Municipal Corporation of

Greater Mumbai & anr. ..Respondents.

....

Mr.S.M.Shettigar for the Appellant.

Mrs.A.R.Lambey for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

14th December, 2005.

P.C. :

This Appeal arises out of an order of the Trial Court dismissing a Motion for interim relief. The Municipal Corporation has issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 in respect of the unauthorized enclosure

which has been carried out partly with brick masonry walls and partly with iron grills admeasuring 24’ x 5’ 9". After furnishing to the Appellant an opportunity of submitting a representation, the Assistant Municipal Commissioner by an order dated 16th February, 2004 arrived at a conclusion that the work is not authorized.

The Appellant has applied for regularization by a communication dated 25th August, 2005 to the Assistant Municipal Commissioner, K-East ward. In response the Assistant Municipal Commissioner by a communication dated 29th October, 2005 recorded that the representative of the Appellant was called upon to submit a copy of the approved plan which had not been produced till the date of the communication. Hence, the Appellant was informed that her application for regularization cannot be considered. Even at this stage, it would be open to the Appellant to produce necessary documentation that is required before the Assistant Municipal Commissioner within a period of two weeks. In the event that this is done, the Assistant Municipal

Commissioner, K-East ward shall consider the application for regularization in accordance with law. For a period of two weeks from today, no coercive steps shall be taken against the enclosure and in the event that an approved plan is submitted, no coercive steps shall be taken until the application is disposed of. The Appellant shall appear before the Assistant Municipal Commissioner, K-East ward on 19th December, 2005 at which point of time the Assistant Municipal Commissioner shall inform the Appellant of what additional material is required to be produced. The aforesaid material shall also be produced within the time which is allowed by the Assistant Municipal Commissioner. The Assistant Municipal Commissioner shall also consider the submission of the Appellant that similar structures have been purported to be enclosed on the ground floor of the suit premises. The Appeal is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.